IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 19773 of 2007(D)

AGAINST THE ORDER DATED 15/06/2007 IN IA. 2066 /2007 IN CMA.66/2007 of ADDL.DISTRICT COURT, THRISSUR

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PETITIONER:

ECHUKUTTY, W/O.THEKKEPURAKKAL NANU,
PORATHUR DESOM, ALAPPAD VILLAGE,
THRISSUR.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:

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1. BALAN, S/O.MARASSERI NEELAKANDAN,
MARATHAKKARA VILLAGE, ELTHURUTHY DESOM,
THRISSUR DISTRICT.

2. THANKAPPAN,
S/O.MARASSERI NEELAKANDAN,
MARATHAKKARA VILLAGE, MARATHAKKARA,
ELTHURUTHY DESOM, THRISSUR.

3. SMT.KUNJI,
W/O.PALAKKADI THEKKEPURAKKAL PUSHPAN,
VATANAPPILLY VILLAGE, THRISSUR DIST.

4. KUTTAPPAN,
S/O.MARASSERI NEELAKANDAN,
MARATHAKKARA VILLAGE, ELTHURUTHY,
THRISSUR.

5. NARAYANAN,
S/O.MARASSERI NEELAKANDAN,
MARATHAKKARA VILLAGE, ELTHURUTHY,
MARATHAKKARA, THRISSUR.

6. SMT.SANTHA, W/O.LATE APPUKUTTAN,
MARASSERI, MARATHAKKARA, ELTHURUTHY,
THRISSUR.

7. UNNIKRISHNAN,
S/O.LATE ELAMTHURUTHY MARASSERI APPUKUTTAN,
MARATHAKKARA, ELTHURUTHY, THRISSUR.

8. SMT.JYOTHILAKSHMI,
W/O.VATTAPPARAMBIL UNNIKRISHNAN,
VELOOR VILLAGE, PAYYOOR DESOM,
TALAPPILLY TALUK, THRISSUR.

9. SMT.BINDULAKSHMI,
W/O.KIZHAKKOOTT KUTTAN,
MANAKODY VILLAGE, THRISSUR DIST.

10. ANANDALAKSHMI,
D/O.ELAMTHURUTHY MARASSERI APPUKUTTAN,
MARATHAKKARA, THRISSUR.

11. DHANALAKSHMI,
W/O.PALLIPARAMBIL RAJU,
KANIMANGALAM DESOM, THRISSUR DIST.

BY ADV.SRI.V.CHITHAMBARESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

W.P.(C) NO.19773 of 2007

Dated this the 27th day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash the order of the learned Ist Additional District Judge, Thrissur in I.A.2066/2007 in CMA 66/2007. At the outset, I like to point out that the learned District Judge should have disposed of the CMA itself instead of straining so much to dispose of an interlocutory application in the civil miscellaneous appeal. Now the brief facts necessary are as follows:-

Admittedly the property belonged to one Neelakandan. There were land tribunal proceedings for certificate of purchase and the matter reached up to the apex court and a certificate of purchase had been issued in favour of all the children of Neelakandan including the plaintiff in the suit. Thereafter reference is made to two documents by the defendants, one is Will executed by the father in favour of the children whereby the

sons are directed to make some payment to the daughter in lieu of their share over the property. There is also a document Ext.P2 which is alleged to be executed by the plaintiff and her sister in favour of the defendants. The learned counsel for the writ petitioner submits that the document is under challenge. A perusal of the said document would reveal that reference has been made to the will of the year 1987 and thereafter consideration had been paid for 1/7 shares each of the executants of the document and further recites that they had received a consideration of Rs.22,000/= and had relinquished all their rights over the property. If this document is true, the plaintiff will have no right over the property whether it is under the will or under Ext.B2. Prima facie Ext.B2 is a registered document. Ext.B2 can be avoided only on the ground known to law. So until and unless, it is established that Ext.B2 is vitiated for any of the grounds known to law, it will survive and the plaintiff will not be having any right over the property. At the preliminary stage of temporary injunction, the court has to give due weight to a document which is registered and reference has been made by the learned District Judge to the decision reported

in ***Joseph George and others*** *v* ***Chacko Thomas and others*** (1990(2) KLJ 115). So until and unless there is some evidence to declare the document as void or for setting aside the document. In the interlocutory stage the court has to place reliance on the same. When such reliance is placed, the plaintiff will have no right at this stage and therefore there is no prima facie case and there is no balance of convenience and no irreparable injury to the plaintiff. In case the property is transferred in favour of third party during the pendency of the suit and ultimately if the plaintiff succeeds, then naturally the said transfer will be hit by doctrine of lis pendens and it will not destroy the right of the plaintiff over the property. Therefore the order under challenge is not liable to be set aside and therefore the District Court may dispose of the CMA immediately and it may think off giving a time bound direction to the court below or disposal of the case when it comes up for hearing.

The writ petition is dismissed.

M.N.KRISHNAN, JUDGE

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